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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

February 9, 1998

BY COURIER

EX PARTE OR LATE FILED

Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

EX PARTE PRESENTATION

Re: **CC Docket No. 96-128**

Dear Ms. Salas:

On February 6, 1998, the undersigned counsel and co-counsel of this law firm, on behalf of the American Public Communications Council, Inc. ("APCC"), Vincent Sandusky, President of the APCC, and Andrew Barrett, a consultant to the APCC, met with Commissioner Harold Furchtgott-Roth, Kevin Martin, Legal Advisor to Commissioner Furchtgott-Roth, and Glenn T. Reynolds of the Commission's Common Carrier Bureau.

During the meeting, we presented an historical overview of payphone regulation to date. Our discussions were limited to matters related to payphone regulation from an historical perspective, and the information contained in the presentation materials enclosed herewith.

If you desire any further information, please contact the undersigned.

Sincerely yours,

Albert Kramer

Albert H. Kramer

AHK/rw
Enclosure
cc: Harold Furchtgott-Roth
Kevin Martin
Glenn T. Reynolds

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RELEVANT PAYPHONE COMPENSATION CITATIONS

Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket 96-128, Notice of Proposed Rulemaking, 11 FCC Rcd 6716 (1996); Report and Order, 11 FCC Rcd 20541 (1996); Order on Reconsideration, 11 FCC Rcd 21233 (1996) (collectively, the "Payphone Orders").

Illinois Public Telecommunications Assn. v. FCC, 117 F.3d 555 (D.C. Cir. 1997), supplemental opinion 123 F.3d 693 (D.C.Cir. 1997), petition for rehearing denied.

Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket 96-128, Second Report and Order, FCC 97-371 (rel. October 9, 1997) ("Remand Order").

Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35, Second Report and Order, 7 FCC Rcd 3251 (1992); Order on Reconsideration, 8 FCC Rcd 7151 (1993).

Florida Public Telecommunications Assn. v. FCC, 54 F.3d 857 (D.C.Cir. 1995).

TERMINOLOGY AND TYPES OF CALLS

Payphone Service Provider ("PSP")	The term that the Act and the Commission have used since 1996 to refer to both LEC payphone providers and independent, non-LEC payphone providers.
Independent Payphone Provider ("IPP")	Another frequently used, more-specific term for an independent, non-LEC payphone provider.
Local Coin Call	A local, non-toll call that a caller makes after depositing coins into the payphone's coin mechanism.
1+ Toll Calls	A long-distance call that a caller makes after depositing coins into the payphone's coin mechanism.

TERMINOLOGY AND TYPES OF CALL (cont'd)

0+ Call	Any call the caller makes with the assistance of an operator, automated or live, by simply dialing 0+, the area code, and the phone number prior to entering a calling card number or other billing information. 0+ calls go to the operator service provider ("OSP") presubscribed to the payphone.
Access Code Call	A call that uses a 10XXX code or access number (such as 1-800-CALL-ATT) to reach a carrier other than the one presubscribed to the payphone.
Subscriber 800 Call (including 888, 887, etc.)	A call that is toll-free to the caller, but billed to the subscriber/recipient.
Dial-Around Call	A term referring to calls in which the caller "dials around" the payphone's presubscribed carrier, i.e., both access code calls and subscriber calls.

COMPENSATION BEFORE 1996 ACT

<u>Independent Payphone Service Providers</u>

- **Coins for local calls**
  - Rate determined by the state commissions, often set below IPP's actual costs of providing service
- **Commissions for 0+ calls**
  - State commissions often capped rates for intrastate calls
- **Coins for toll calls**
  - Relatively few of these calls

COMPENSATION BEFORE 1996 ACT (cont'd)

<u>Independent Payphone Service Providers</u> (cont'd)

- **FCC-mandated compensation for interstate access code calls ($6 flat rate per month per payphone) (June 1992)**

  - The Telephone Operator Consumer Services Improvement Act of 1990 ("TOCSIA") required PSPs (and other aggregators) to give callers the capability to access carriers other than those presubscribed to the payphone

  - FCC based the $6 flat-rate on an average of 15 access code calls per payphone per month at a rate of $0.40 per call

- ***But FCC erroneously ruled no compensation for subscriber 800 calls***

  - TOCSIA prevented the blocking of subscriber 800 calls, so PSPs had no leverage to negotiate compensation

  - The DC Circuit held in mid 1995 that the FCC had erred in not considering whether subscriber 800 calls should be compensated

  - Unfortunately, this holding came three years after PSPs should have been compensated for these calls

  - The Commission only adopted a compensation plan for subscriber 800 calls as part of its implementation of the 1996 Act

COMPENSATION BEFORE 1996 ACT (cont'd)

<u>LEC Payphone Service Providers</u>

- o **Coins for local calls**

  - -- Rates were determined by the state commissions as a part of the LEC's tariffed services and, consequently, generally subsidized by other services

- o **BOCs received no direct commissions for 0+ interLATA calls, but carried 0+ intraLATA calls**

  - -- MFJ restrictions prohibited the BOCs from having any relationship, including the receipt of commissions, with the IXCs presubscribed to their payphones

  - -- IXCs/OSPs paid commissions directly to the premises owners, who chose presubscribed IXC

- o **Coins for toll calls**

  - -- Relatively few of these calls

COMPENSATION BEFORE 1996 ACT (cont'd)

LEC Payphone Service Providers (cont'd)

- **Compensation for access code calls and subscriber 800 calls**
  - LECs received "compensation" for interstate dial-around calls through the payphone-specific elements of the interstate access charges paid by IXCs, which cover the interstate portion of all NTS and related costs associated with payphones
- **Cost recovery for the LECs was "guaranteed"**
  - All payphone costs and revenues intermixed with all local exchange service costs and revenues
  - Historically a subsidized service

SECTION 276 OF THE ACT (as amended by the Telecommunications Act of 1996)

Statutory Goals of Section 276

- "[T]o promote competition among payphone service providers" and
- "[To] promote the widespread deployment of payphone services to the benefit of the general public"

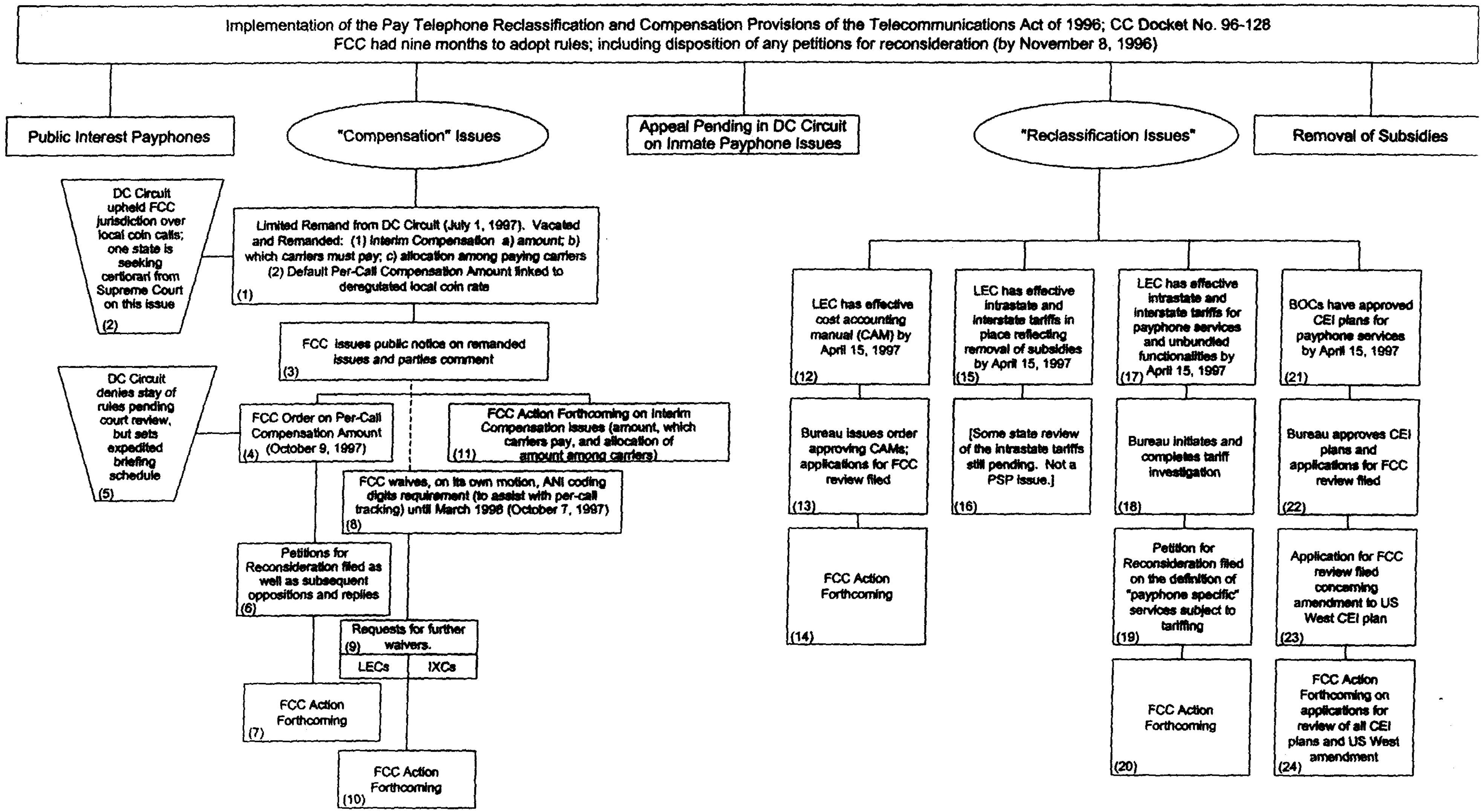
SECTION 276 OF THE ACT (cont'd)

- Mandates that PSPs receive "fair" compensation for "each and every completed *intra*state and interstate call" originated by their payphones. Section 276(b)(1)(A)
- Requires the termination of subsidies for LEC payphones. Section 276(b)(1)(B)
- Requires BOCs to provide payphone service pursuant to nonstructural safeguards. Section 276(a)&(b)(1)(C)
- Permits BOCs to select the interLATA carrier presubscribed to their payphones, if approved by FCC (which Commission has approved). Section 276(b)(1)(D)
- Permits all PSPs to select the intraLATA carrier presubscribed to their payphones. Section 276(b)(1)(E)
- Requires the Commission to determine whether "public interest payphones" should be maintained and, if so, ensure that they are supported fairly and equitably. Section 276(b)(2)
- All provisions of Section 276 expressly apply to "the provision of inmate telephone service in correctional institutions." Section 276(d)
- IPPs had been requesting for *10 years* that the Commission adopt the first three items of relief (with the exception of compensation for intrastate calls)

SECTION 276 OF THE ACT (cont'd)

Statutory Deadline

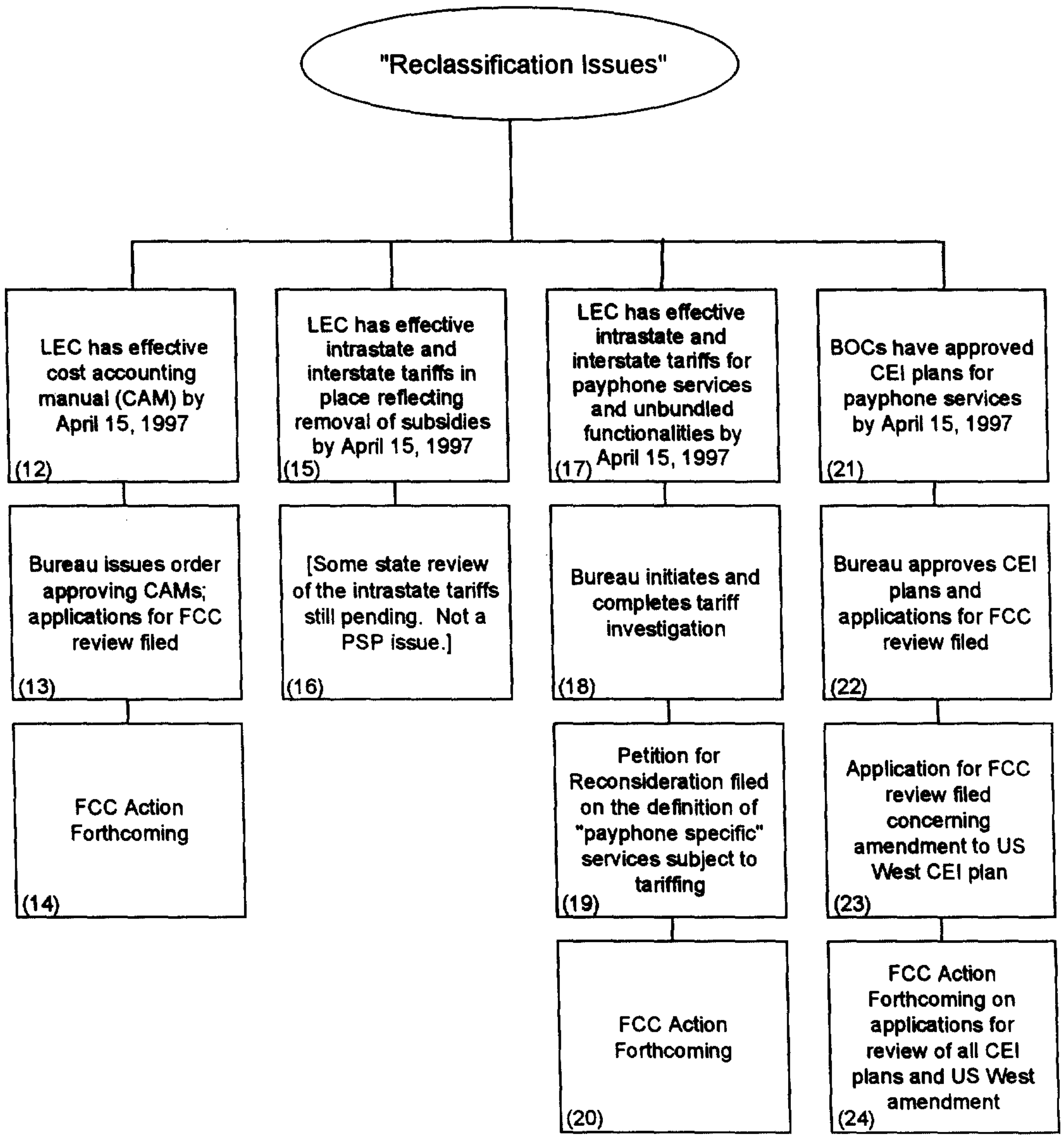
- The Commission was given "9 months after the date of enactment of the Telecommunications Act of 1996" to "take all actions necessary (including any reconsideration) to prescribe regulations" to implement Section 276
- The Telecommunications Act was signed into law on February 8, 1996, giving the Commission until November 8, 1996 to complete its actions


Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996; CC Docket No. 96-128
FCC had nine months to adopt rules; including disposition of any petitions for reconsideration (by November 8, 1996)
Public Interest Payphones
"Compensation" Issues
Appeal Pending in DC Circuit on Inmate Payphone Issues
"Reclassification Issues"
Removal of Subsidies
DC Circuit upheld FCC jurisdiction over local coin calls; one state is seeking certiorari from Supreme Court on this issue (2)
DC Circuit denies stay of rules pending court review, but sets expedited briefing schedule (5)
Limited Remand from DC Circuit (July 1, 1997). Vacated and Remanded: (1) Interim Compensation a) amount; b) which carriers must pay; c) allocation among paying carriers (2) Default Per-Call Compensation Amount linked to deregulated local coin rate (1)
FCC issues public notice on remanded issues and parties comment (3)
FCC Order on Per-Call Compensation Amount (October 9, 1997) (4)
FCC Action Forthcoming on Interim Compensation Issues (amount, which carriers pay, and allocation of amount among carriers) (11)
FCC waives, on its own motion, ANI coding digits requirement (to assist with per-call tracking) until March 1998 (October 7, 1997) (8)
Petitions for Reconsideration filed as well as subsequent oppositions and replies (6)
Requests for further waivers. (9)
LECs
IXCs
FCC Action Forthcoming (7)
FCC Action Forthcoming (10)
LEC has effective cost accounting manual (CAM) by April 15, 1997 (12)
Bureau issues order approving CAMs; applications for FCC review filed (13)
FCC Action Forthcoming (14)
LEC has effective intrastate and interstate tariffs in place reflecting removal of subsidies by April 15, 1997 (15)
[Some state review of the intrastate tariffs still pending. Not a PSP issue.] (16)
LEC has effective intrastate and interstate tariffs for payphone services and unbundled functionalities by April 15, 1997 (17)
Bureau initiates and completes tariff investigation (18)
Petition for Reconsideration filed on the definition of "payphone specific" services subject to tariffing (19)
FCC Action Forthcoming (20)
BOCs have approved CEI plans for payphone services by April 15, 1997 (21)
Bureau approves CEI plans and applications for FCC review filed (22)
Application for FCC review filed concerning amendment to US West CEI plan (23)
FCC Action Forthcoming on applications for review of all CEI plans and US West amendment (24)

SECTION 276 OF THE ACT (cont'd)

<u>Reclassification Issues</u> (Implementation of Nonstructural Safeguards)

- o In conjunction with reclassifying their payphones as customer premises equipment ("CPE") and offering central office coin transmission services to PSPs under a nondiscriminatory, public, tariffed offering, LECs are required to have
  - -- an effective cost accounting manual ("CAM")
  - -- effective intrastate and interstate tariffs in place for payphone services and unbundled functionalities
  - -- approved CEI plans for payphone services
- o The <u>Payphone Orders</u> required all of these steps to be completed by April 15, 1997
  - -- Approved by the Common Carrier Bureau per delegated authority
- o In each case, the Commission has pending petitions for reconsideration or applications for review



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SECTION 276 OF THE ACT (cont'd)

Removal of Subsidies

- o The Commission directed the states to identify and remove any LEC subsidies for its provision of payphone service
- o The speed of state efforts to remove these subsidies has varied
- o There remains some questions at the state level of whether all of these subsidies have been removed in each instance

SECTION 276 OF THE ACT (cont'd)

Public Interest Payphones

- Commission concluded that "there is a need to ensure the maintenance of payphones that serve the public policy interests of health, safety, and welfare where there would not otherwise be payphones as a result of the operation of the market."

- Left to the states the primary responsibility for administering and funding public interest payphone programs.

- States have two years from release of initial payphone order to "review whether [each] has adequately provided for public interest payphones in a manner consistent with the [Payphone Orders]."

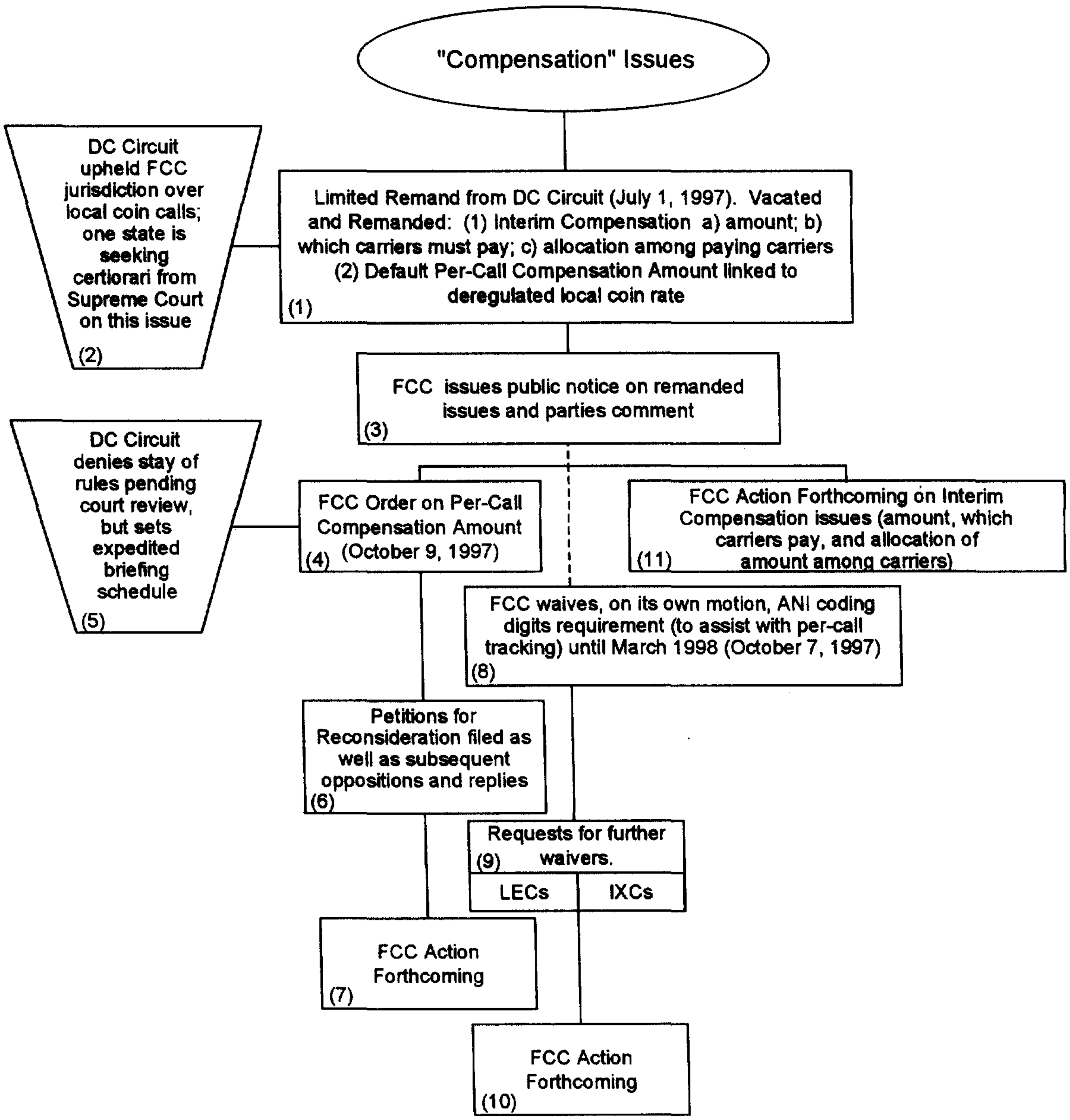
SECTION 276 OF THE ACT (cont'd)

Inmate Payphones

- The Commission declined to provide a compensation element to cover costs that are unique to inmate payphones. Although inmate payphones are subject to the same general compensation rules as other payphones, unlike local coin calling, the issue of cost recovery for local and intrastate calls was left unaddressed

- Inmate service providers have appealed this conclusion to the U.S. Court of Appeals for the D.C. Circuit

- After the appeal was briefed, the Commission sought a voluntary remand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COMPENSATION AFTER 1996 ACT, AS SET FORTH IN THE <u>PAYPHONE ORDERS</u>

<u>Per-Call Compensation for "Each and Every Call"</u>

- **"Fair" compensation**

  -- Defined by Commission as "where there is a willing seller and a willing buyer at a price agreeable to both." <u>Payphone Order</u> at para. 52.

- **Both independent PSPs and LEC PSPs receive compensation for all calls**

  -- Once the LECs removed their payphone assets from the ratebase and complied with certain other requirements, as of April 15, 1997, they should be competing on the same terms as the independent PSPs (although some "reclassification" issues remain to be resolved)

  -- LEC PSPs and IPPs are, therefore, entitled to receive the same "competitive market" compensation opportunities

COMPENSATION AFTER 1996 ACT (cont'd)

<u>**Per-Call Compensation for "Each and Every Call"**</u> **(cont'd)**

- **Coins for local calls**
  - -- PSP allowed to charge a market-based rate as of October 7, 1997
  - -- States are preempted from setting any rate or imposing rate ceilings
  - -- Some unresolved issues
    - * <u>E.g.</u>, limits on initial increment of call

COMPENSATION AFTER 1996 ACT (cont'd)

Per-Call Compensation for Each and Every Call (cont'd)

- **Per-call compensation for access code calls and subscriber 800 calls to be effective on October 7, 1997**
  - -- paid to PSP by the "facilities-based" carrier that bills the end user for the call
  - -- per-call default compensation rate equal to the local coin rate charged at payphone
  - -- initially set the default rate at $0.35 per call, which was the predominant deregulated local coin rate in four of the six states that had deregulated such rates at time of Commission action
  - -- default rate applies only in absence of an agreement between PSP and carrier to pay a different amount
  - -- after October 7, 1998, the default rate is eliminated in favor of the local coin rate at each payphone (later changed to October 7, 1999)

COMPENSATION AFTER 1996 ACT (cont'd)

Per-Call Compensation for Each and Every Call (cont'd)

- **Flat-rate interim compensation for access code calls and subscriber 800 calls for the first year of the Commission's rules (through October 6, 1997)**

  - To give all carriers an opportunity to implement a per-call tracking capability, the Commission delayed the beginning of "per-call" compensation for one year

  - The monthly flat-rate was based on an average number of 131 calls (x $0.35) originated by a payphone in a one-month period

  - The largest IXCs (those with annual toll revenues in excess of $100 million) were required to pay a proportional share of $45.85 per month per payphone to compensate these calls

COMPENSATION AFTER 1996 ACT (cont'd)

Per-Call Compensation for Each and Every Call (cont'd)

- **Commissions on 0+ calls**

  -- All PSPs permitted to receive 0+ commissions

COMPENSATION UNDER PAYPHONE ORDERS

Per-Call Compensation for Each and Every Call

- **Coins for local calls**
  - PSP allowed to charge a market-based rate as of October 7, 1997
  - States are preempted from setting any rate or imposing rate ceilings
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- **Commissions on 0+ calls**
  - All PSPs permitted to receive 0+ commissions

DC CIRCUIT'S PARTIAL REMAND OF THE PAYPHONE PROCEEDING

- o Twenty parties sought review of various aspects of the Commission's payphone orders in the U.S. Court of Appeals for the District of Columbia Circuit

- o In an opinion announced on July 1, 1997, Illinois Public Telephone Association v. FCC, the Court upheld much of the Commission's (de)regulatory framework for the payphone industry, although it remanded some important issues for further consideration